DOLLAR GENERAL

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September 20, 2010

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7 PO Box 5116
Norwalk, CT 06856-5116
Via email: director@fasb.org
File Reference No. 1840-100

Re: Proposed Changes to Disclosure of Loss Contingencies

Dear Mr. Golden

We appreciate the opportunity to provide our comments regarding the proposed Accounting Standards Update (ASU), "Disclosure of Certain Loss Contingencies" (the "Exposure Draft")[1] of the Financial Accounting Standards Board (the "Board"). This letter addresses our position on the Exposure Draft from our perspective as a leading retailer.

Introduction

Dollar General Corporation ("we," the "Company," or "Dollar General") is the largest discount retailer in the United States by number of stores, with over 9,000 stores operated by its various subsidiaries in 35 states, primarily in the southern, southwestern, midwestern and eastern United States. Our organization employs approximately 80,000 employees and conducts over one billion customer transactions per year. As a threshold matter, we note that because Dollar General, like other companies in the retail industry, routinely faces a significant number of claims and lawsuits in the ordinary course of business, it may be disproportionately and negatively affected by the proposed quantitative and qualitative disclosure requirements included in the Exposure Draft. Indeed, thousands of lawsuits and other claims are filed or made against retail companies every year, many of which are settled quickly, covered by insurance, and considered simply a cost of doing business in this customer-facing industry.

Providing financial statement users with meaningful information to enable them to better assess the likelihood, timing and magnitude of loss contingencies is an important goal. This goal, however, must be balanced against the additional costs and risks imposed on companies and their shareholders by the proposed changes to the existing disclosure standards and framework. We question whether the proposed changes will result in useful additional disclosures the value of which truly outweighs the additional burden and risk they place on companies and their shareholders.

[1] Draft, *Proposed Accounting Standards Update – Disclosure of Certain Loss Contingencies*, File Reference No. 1840-100 (July 20, 2010).

It is evident from its careful and thoughtful approach to the Exposure Draft, as well as the changes that have been made since the original 2008 proposal, that the Board recognizes the controversial nature of the proposed disclosure requirements. However, in our view, the proposal continues to include requirements that will inadvertently advance the interests of a broader constituency than the shareholders to whom management's fiduciary duties extend, provide a roadmap for plaintiff's attorneys to access privileged information, undermine a company's ongoing litigation strategy, and result in unwieldy, unnecessary and potentially confusing and misleading disclosures. As a result, the proposal unnecessarily and inappropriately will jeopardize shareholder interests. The Exposure Draft reflects a profound break from the American Bar Association ("ABA") - American Institute for Certified Public Accountants ("AICPA") Treaty's carefully considered balance between the need to protect the attorney-client privilege/work product doctrine and the need for reliable and transparent financial reporting. Moreover, it does so with broad new disclosure requirements that are not consistent with existing materiality standards, including those set forth in Item 103 of Regulation S-K.

Although we understand the inherent difficulties in balancing the views of varying constituencies and the desire to ensure that financial statement users obtain timely and transparent information, we believe that the current accounting standards relating to loss contingencies have served all constituencies well when followed in good faith. Given the litigious nature of U.S. society and its adversarial legal system, the expanded disclosures will likely have far reaching, unintended and negative consequences for U.S. companies and their investors that far outweigh any potential benefit to financial statement users.

As is detailed below, we believe that the Board's proposed new loss contingency framework will result in substantial additional lawsuits and legal fees, higher settlement costs and insurance premiums, higher audit fees resulting from detailed transaction tests instead of substantive testing, and hours spent gaining understanding of management's judgments regarding disclosures (case by case and in the aggregate), and higher information technology and accounting costs to gather and prepare disclosures. These costs necessarily will reduce shareholder return without appreciably improving, and in some cases actually degrading, the quality of financial statement disclosure. Given the Board's aggressive timetable for this and other major standard setting initiatives, which themselves will require major new systems, processes and controls, we believe that resources could be better focused elsewhere.

If Disclosure Requirements Similar to Those in the Exposure Draft are Adopted, They Should Include an Exemption for Prejudicial Information

As is discussed throughout this letter, the proposed new disclosure requirements:

- will negatively affect a company's ability to defend itself in ongoing litigation,
- will encourage plaintiffs' attorneys to pursue additional claims,
- will prevent efficient settlement of claims, and
- may result in an unintended waiver of the attorney-client privilege and work product protections.

The only effective means of preventing these unintended prejudicial consequences is to include an exemption for the disclosure of prejudicial information.

Accounting rules should not drive litigation outcomes. Indeed, the Board appears to support that principle in the Exposure Draft. *See* Minutes of Aug. 19, 2009 Board Meeting, pars. 20(d) ("Disclosure about the contingency ... generally should not affect the outcome of the contingency itself to the detriment of the entity"). Unfortunately, the new draft does not sufficiently mitigate that risk. In particular, we fail to see how the requirements to disclose accruals, remote contingencies, information "relevant" to the dispute and insurance information, even when not necessary to make the financial statements not misleading, could realistically *not* materially and adversely affect the outcome of certain loss contingencies.

The Board explained that it did not include a prejudicial disclosure exemption because the Exposure Draft eliminated many of the speculative or predictive disclosures proposed in the original 2008 proposal and because of the potential difficulty in interpreting and applying such an exemption. We respectfully disagree and believe that an exemption for prejudicial information remains prudent, fair and necessary to prevent harm to the shareholders whose protection is the very basis for the disclosure. If these requirements are not eliminated, *a prejudicial exemption should be reinstated* and its use should be permitted (except in cases when its use would render financial statements materially misleading) whenever, in the opinion of the reporting entity's legal counsel, an otherwise required disclosure would convey information that would impede the company's effective defense or settlement of the claim.

Without an Exemption for Prejudicial Information, the Exposure Draft's New Disclosures Will Require Companies to Disclose Extremely Prejudicial Information

While the Exposure Draft's new disclosures undoubtedly will enhance the <u>quantity</u> of information presented, they will not improve the <u>quality</u> of information about the nature, potential magnitude, and potential timing (if known) of loss contingencies. As proposed, the significant increase in required disclosures will likely result only in greater confusion as legally untrained readers struggle to effectively determine which of the many disclosures are significant. The financial statement user should not be placed in such a position. At the same time, the required disclosures will likely be highly prejudicial to a company's litigation posture, particularly given today's high stakes litigation environment.

Litigation is an inherently arduous and lengthy process, the details of which are not adequately appreciated and interpreted by the average financial statement user who has no legal training and experience. Currently, litigation disclosures are carefully and meticulously evaluated by companies based on an intimate understanding of the facts of a case, applied against the law, legal precedents and judicial process (*e.g.* venue, jurisdiction, presiding judge, jury composition and appeal status). Requiring disclosure to untrained readers of certain discrete details that, in fact, have no legal importance may lend them unwarranted significance and, accordingly, would be misleading.

For example, the proposed requirement to disclose all amounts claimed (including punitive or treble damages), no matter how wildly inflated, could trigger disclosures relative to remote loss contingencies (if the impact could be "severe", such as a lawsuit seeking to bar the company from doing business) or any loss contingency for which the company has insufficient information to determine that the risk of loss is remote. Disclosing such artificial, arbitrary valuations will only elevate their significance, regardless of any explanatory text that attempts to put them in context, provides no meaningful insight into a company's future cash flows and would likely have the ironic consequence of leaving the financial statement user with an overstated, inaccurate view of potential losses. Premature disclosure of such uncertain estimates and projections also could lead to additional litigation and claims if the information is later deemed inaccurate and a third party claimed reliance upon it, as these disclosures are not protected by current safe harbor rules relating to "forward-looking" information.

Initially, the new disclosures regarding litigation accounts will effectively create a floor for settlement discussions because no plaintiff would rationally settle for an amount lower than that at which the company itself has valued the claim. Perhaps more importantly, opposing counsel will no doubt use a company's financial disclosures as evidence in litigation as the company's own assessment of fault and liability, and juries may regard such evidence as a company's admission of liability. This disclosure requirement thus undermines a company's ability to defend itself and to receive a fair trial based on the facts of the case.

Current financial reporting and disclosure requirements already compel companies to disclose material activity associated with loss contingencies and require classification as either short or long-term according to their nature. The tabular reconciliation requirement poses the risk of significant prejudice to reporting entities for the same reasons noted above with respect to disclosure of accruals generally. In addition, the rollforward requirements are arduous and would almost certainly require additional systems investment and ongoing headcount to maintain, while providing no apparent benefit to investors. Without question, companies will be required to set up additional costly accounting structures to provide the detailed rollforward information, including increases and decreases in accruals as well as payments, none of which provides additional insight into how contingencies could affect the company.

More importantly, presenting tabular period changes in contingency estimates, the reasons for the changes, and the carrying amount of the accruals will provide adversaries with insights into amounts accrued for a particular litigation or class of litigation, and any changes thereto that will prejudice a company's ability to properly defend itself. Ongoing adjustments in these disclosures would provide a window into legal advice provided to the company (as well as attorney work product) and management's evolving view of the matter, providing plaintiffs' attorneys with a road map of the company's litigation strategy. The requirement for tabular reconciliation in *interim* periods only heightens this risk by making it easier for adversaries to correlate accrual adjustments to recent developments in a particular matter and thus to infer how the reporting entity's assessment of its exposure has changed in light of those events.

Changes over time in litigation-related estimates and required explanations would be used by plaintiffs to ascertain the company's mindset as to the strength of its position with respect to certain litigation, as well as the company's legal and settlement strategies, and possibly result in attempts for larger settlements than would otherwise be reached. It also will hinder a company's ability to mediate disputes or resolve them outside the expensive process of full-blown litigation. The incentives to negotiate resolutions will be greatly reduced, because practically, it may be difficult for a company to settle a lawsuit for an amount that is lower than the accrual for such litigation in its financial statements.

The following is an example of the anomalous and prejudicial effects that could result from the proposed disclosures. If in a particular quarter a company increases a litigation accrual by $1 million as a result of a denial of its motion for summary judgment, the plaintiff would likely increase its settlement demand by at least $1 million, inferring from the tabular reconciliation that the company views its potential liability to have increased as a result of the denial by at least $1 million. While the plaintiff likely would have increased its settlement demand by some amount after denial of summary judgment in any event, it is the tabular reconciliation that provides the plaintiff with insight into the company's valuation of its increased liability exposure. This problem would be mitigated, although certainly not eliminated, by requiring annual rather than quarterly reconciliation.

Aggregation of Disclosure on an Overall Basis Should Be Permitted for Disclosure of Accruals, Including in the Tabular Reconciliation, and for Estimates of Possible Loss or Range of Loss, But Does Not Truly Solve The Problems Presented By The Exposure Draft

The proposed new disclosure of specific accruals for each contingency that is disclosed in the footnotes to the financial statements is a significant departure from current standards that do not require disclosure of individual accruals unless the failure to disclose a specific accrual could make the financial statements misleading. Because an accrual is often based upon an attorney's confidential advice with respect to the claim or litigation, these disclosures may result in the waiver of the attorney-client and work product privileges. Furthermore, disclosure of the total number of claims outstanding, the average amount claimed and the average settlement amount for claims in each class will provide prejudicial information to litigation adversaries who will use it as leverage in settlement negotiations.

We disagree with the Board's view that the tabular disclosures are unlikely to be more prejudicial to the company than the current standard, Accounting Standards Codification Topic 450, which may require disclosure of accruals in certain cases to avoid misleading financial statements. Although we do not disagree with that standard, it does not justify a case-by-case or a class-by-class presentation if the result would be disclosure about matters immaterial to the financial statements as a whole that would nevertheless be highly prejudicial to the company. This principle applies with additional force when a company discloses its estimate of possible loss or range of loss. In that case, the information provided is inherently less reliable than information about amounts accrued; there is correspondingly even less justification for exposing companies to a risk of highly prejudicial disclosure by requiring a class-by-class presentation. Conversely, Dollar General retains a significant portion of the risk for workers' compensation, employee health, casualty and automobile

and general liability. Although individual claims are almost always immaterial, these amounts, when totaled by class or type, may be considered material, and the disclosures of amounts accrued by class or type, including the average settlement amount, could result in prejudicial information and ultimately higher costs with regard to these claims. Accordingly, we believe overall aggregation of disclosure should be permitted for both accrual disclosure, including the tabular reconciliation, and estimates of possible loss or range of loss.[2]

The negative impact of the specific accrual disclosure standard is made further acute by the proposed provision that would require disclosure of information relating to possible recoveries from insurance and other sources. While an actual plaintiff may in some jurisdictions be able to discover these facts in an ongoing proceeding, public disclosure of insurance coverage may invite additional lawsuits from other potential adversaries who are not otherwise privy to this information. Additionally, to the extent accruals or changes in accruals are traceable to a particular litigation or proceeding, disclosure will invite discovery by plaintiffs. If discovery is granted – a risk that cannot be excluded, at least in the United States – the disclosure again could be outcome-determinative of the contingency itself.

Furthermore, in Dollar General's case, the contingency reserves, which are material in the aggregate, are made up of thousands of individual claims, virtually all of which are immaterial. Not only will large amounts of time and resources be required to properly categorize types of claims, it is extremely unclear precisely what would constitute a "class" or "type" for purposes of aggregation. The Board's own guidance on aggregation indicates, for example, that aggregation may be inappropriate for litigation matters that have "significantly different timings of expected future cash outflows," or that are pending in "jurisdictions that have different legal characteristics that could affect the potential timing or magnitude of the loss." These qualifications reflect the obvious challenges that a company such as Dollar General, which operates nationally or internationally, will face when making aggregation decisions. In today's global marketplace, companies are battling litigation in jurisdictions all over the country and the world. The dissimilarities in legal rules and even in juries will pose practical impediments to aggregation. Indeed, using this guidance, most of Dollar General's matters do not appear to fall into a generic "class or type" and, therefore, would not be capable of aggregation. A requirement to include qualitative disclosure regarding each of the numerous individually immaterial claims that make up our contingency reserves would merely result in unwieldy and useless disclosure. Further, we note that the distinctions among classes contemplated by the Exposure Draft are unworkable, needlessly burdensome to develop and likely to change over time, making period-to-period comparisons more difficult. Indeed, even the categorization of an individual proceeding could change over time. In short, aggregation in all its facets, will be time-consuming and costly, and will be laden with subjectivity and inconsistency among companies, rendering the disclosures substantially worthless. In any event, if the Board does

[2] We do not believe that the addition of aggregation language in the guidance addresses the risk of disclosing information that is too detailed, as the Board itself indicated that it did not include this language in its original 2008 proposal because many companies were already aggregating their disclosures in a meaningful way.

not permit aggregation on an overall basis, it should at least permit aggregation based more simply on the nature of the contingency.

For the reasons noted above and elsewhere in this letter, we strongly urge the Board to modify its final guidance to require disclosure of accrual amounts only "if necessary for the financial statements not to be misleading," as under the current standard, and to remove the requirement for disclosure of accrual amounts in the tabular reconciliation.

The Nature and Scope of the Required Narrative Disclosures Should Be Narrowed to Eliminate Disclosure That Is Unlikely to Be Useful to Investors and May Be Prejudicial to Companies

Compliance with the needlessly detailed and granular qualitative and quantitative disclosure requirements contained in the Exposure Draft will be burdensome and costly while prompting lengthy disclosure that will be of little use to investors or prejudicial to companies, or both. Four specific examples are discussed below.

Disclosure About Amount of Damages Claimed – The Exposure Draft would require companies to disclose "the amount of damages claimed by the plaintiff" no matter how outlandish. In the U.S. system of notice-style pleading and discovery, the amount claimed frequently bears little relation to a dispute's facts and provides no reliable indication of the suit's likely outcome.[3] The amount asserted is not determined by a neutral party, but rather an advocate, and the magnitude asserted can be driven by numerous extraneous factors, including intent to intimidate and induce settlement, to gain public attention or to extract some other tactical advantage. The amount claimed literally has no meaningful value for financial statement users and likely would mislead investors concerning any real exposure to the company, particularly early in a dispute when there is little additional information upon which to evaluate the contingency.

Disclosure of Expert Testimony -- Litigation is an adversarial process that often features a "battle of the experts" and it would be haphazard and of little use to financial statement users to require companies to disclose amounts cited in expert testimony sponsored by plaintiffs or defendants (or even both, which are, of course, virtually always in conflict). Experts are often successfully challenged as to their testimony, analysis or even their qualifications. For this reason alone, a company could fairly conclude that disclosure about an expert's testimony could be misleading. Moreover, changing disclosures in subsequent periods as expert testimony (or rulings on it) develops and changes would be unhelpful and potentially quite confusing to financial statement users, many of whom will be unable to decipher the meaning of these shifting disclosures.

Disclosure of Other Publicly Available Information -- The Exposure Draft would require disclosure of other "publicly available" quantitative information, but does not provide any guidance about how to apply this criterion. Publicly available quantitative information about potential loss may not be

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[3] Indeed, how often do the headlines read "x" sued for $1 billion only to have no concomitant media exposure when the case is later dismissed or settled for an immaterial amount.

reliable, and, even if the provision were limited to publicly available information in the proceeding,[4] its credibility will be disputed in virtually all cases. The provision also does not explain how this element would relate to non-litigation contingencies, but we believe similar concerns could be present in those matters as well.

Disclosure of Other "Non-Privileged" Information -- The Exposure Draft would require disclosure of other "non-privileged" information relevant to an understanding of the potential magnitude of the possible loss and, in some cases, information relating to recoveries from insurance and other sources if it is "discoverable." This underscores how the new disclosures prejudice a company's litigation posture. Merely because something is "discoverable" under applicable procedural rules does not mean that it has been requested – are plaintiffs' attorneys now going to be able to simply wait for a company's financial disclosures in order to obtain their discovery? A similar but more nuanced question arises in connection with discovery of the reports of consulting experts (a higher burden and information that the plaintiff ordinarily would not get) and testifying experts (information that is discoverable if the plaintiff requests it) – because the reports of consulting experts *possibly* can be discovered, are defendant companies required to disclose them in the notes to financial statements? This clearly is something that the Board has not adequately considered.

We further believe that the requirement to disclose "non-privileged" information, like the requirement to disclose "publicly available" information, is overly broad and would involve a costly and time-consuming exercise that, given the absence of implementation guidance, would raise significant operational and other issues. For example, we question how these disclosures could be audited without a review of legal judgments about the company's application of the attorney-client privilege or other protection. This in turn could affect the company's ability to preserve the privilege or protection, and, in some cases, involve legal judgments regarding discoverability. We believe the Board should instead recognize that litigation contingencies involve assertions of "facts" whose veracity or relevance are often the subject of vigorous debate. Introducing them into financial statement disclosure, at best, will provide only minimal insight into a contingency and, more likely, will confuse or mislead. In any event, such disclosure clearly would not justify the prejudicial impact that it would have on a company in the context of a litigation contingency.

There is a significant risk that auditors will be required to access privileged information

The proposed changes will require disclosure of information that is beyond the scope of the ABA's Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, which sets forth guidelines agreed to by the ABA and AICPA for responding to auditor requests regarding loss contingencies without waiving attorney client privilege. Accordingly, the new disclosures will risk privilege waiver or disclosure of information protected by the attorney work product doctrine. Although the Board states that it will continue to work with the ABA to address

[4] We note that in some jurisdictions, the complaint is not routinely part of the public record and therefore the damage amount claimed may not be viewed as publicly available. In these situations, it is not clear under paragraph 450-20-50-1F.b of the Exposure Draft whether the damages information would have to be disclosed.

such implications, as a matter of practice, resolutions to these issues will be difficult if not impossible to achieve. Issues such as how soon remote losses may be resolved, which remote losses threaten to have a severe impact on the disclosing company, or counsel's well founded prediction on the likelihood of a loss contingency or on the range of loss are inherently issues that go beyond the mere facts or procedural postures of the pending matters. They necessarily delve into counsel's evaluation of the case. Therefore, the risks of privilege waiver are very real and substantial. At the very least, implementation of the current proposal should be delayed until the ABA and the AICPA are provided a reasonable time period to issue modified guidelines that address these concerns.

Because all disclosures must be audited, auditors by necessity will require access to more detailed, privileged case information to verify completeness and accuracy of the disclosures, forcing companies to choose between substantial risks of privilege waiver or a qualification or disclaimer in the audit opinion. For example, the tabular reconciliation of accrued loss contingencies may constitute, and may result in communication with the company's auditors that constitutes, a waiver of the attorney-client privilege and work product protection which would subject the company to discovery related to the information that was produced to determine the disclosed accrual amount. Plaintiffs' requests for discovery involving auditor workpapers are not theoretical, but a practical reality of the environment in which we operate.[5] Enabling plaintiffs' lawyers to arm themselves with the thoughts and impressions of company counsel is a plainly unacceptable outcome that substantially injures the company and its shareholders.

Although we applaud the Board's recognition that the enhanced disclosure requirements are not intended to lead to waivers of these key protections, we are concerned that, notwithstanding this recognition, the protections inevitably will be threatened by the proposed disclosures about accrual amounts. If companies follow the guidance in the Exposure Draft and refrain from disclosing any information that is privileged or subject to attorney work-product protection, then disclosures about accruals likely would be based on very limited information, without the benefit of counsels' analyses of the risks and exposure. Disclosures based on such limited information not only would be laden with necessary disclaimers but also would not fulfill the goals of the Exposure Draft. The tension resulting from concerns about waivers of privilege or work-product protection undoubtedly will have a number of harmful effects on key relationships. The proposed disclosures, particularly relating to accruals, could deter management from fully engaging with counsel on sensitive litigation matters to avoid risks of waiver, real or perceived, that the lawyer's involvement would create. The proposal thus could have the unintended consequence of chilling full and frank discussions between companies and their counsel, to the detriment of the company and its shareholders.

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[5] A recent case, *U.S. v. Textron, Inc.*, 577 F.3d 21 (1st Cir. 2009), ruled that tax accrual materials prepared by in-house lawyers primarily in order to obtain a final audit opinion would not be afforded work-product protection, even though the materials assessed litigation risk.

It is Inconsistent and Misleading to Prohibit Companies From Considering Possible Insurance or Indemnification Recoveries in Determining Whether Disclosure of a Loss Contingency is Required While Simultaneously Requiring Disclosure About Potential Insurance Recoveries

The Exposure Draft's requirement that insurance or indemnification may not be taken into account in assessing materiality and making disclosure decisions will increase significantly the number of disclosed loss contingencies. This requirement is particularly unreflective of reality and will impede a financial statement user's ability to understand the true financial impact of particular litigation contingencies.

The Exposure Draft ignores the central role of insurance and indemnification in risk management and timely claims resolution. Indeed, in U.S. federal courts (and some state courts), the importance of insurance to motivate settlement is reflected in mandatory discovery of certain insurance information. Indemnification, contribution and similar arrangements have also become a key element of commercial transactions, such as securities offerings and M&A transactions, on which all parties rely in evaluating the transactions and resulting risk of loss.

To ignore the business reality that insurance is a risk shifting business strategy distorts the picture of a company's exposure. A company should be allowed to use its judgment in assessing the probability of insurance coverage as it does with many other factual issues in preparing its financial statements. This is particularly true for a company such as Dollar General, which relies heavily on its ability to effectively insure against ordinary course of business risk. Moreover, loss contingencies are themselves uncertain; it seems inappropriately inconsistent to exclude consideration of these common mitigating factors on the grounds that they are also contingent. Indeed, insurance recoveries likely present a much less uncertain contingency. In a standard that is otherwise driven by highly fact-intensive inquiry, there is no justification for excluding consideration of these recoveries. Any new standard should instead caution companies to give due consideration to the likely timing and magnitude of recoveries, as well as factors that may prevent or delay them in whole or in part.

The Exposure Draft's requirement to disclose information about possible recoveries from insurance and other sources for all litigation contingencies that are at least reasonably possible, to the extent that such information is "discoverable," likewise is inconsistent with excluding insurance in evaluating the magnitude of claims. Furthermore, as noted above, there is a significant difference in a company's litigation posture between information that is simply "discoverable" (with the burden on a plaintiff to request it) versus a matter that is unknown to a plaintiff – illustrating again why companies should not be required to reveal prejudicial information. Determinations regarding whether information is discoverable are made by courts, not by parties to litigation themselves. Forcing a company to decide whether information about recoveries is discoverable, when a court has not yet made such a determination, may disrupt this role of the courts and unfairly influence the course of litigation. For example, a court may find the existence of disclosure relevant to whether insurance information is admissible in a matter. In addition, even if discoverable, insurance information often is subject to confidentiality protections when provided to plaintiffs because its disclosure could lead plaintiffs' attorneys to parse the information for their benefit in other litigation matters. Thus, the proposed disclosure requirement could unfairly prejudice companies in unrelated

litigation disputes. For these reasons, we urge the Board to remove this disclosure requirement in its final guidance. At a minimum, we urge the Board to clarify that disclosure is only required where insurance coverage information has actually been provided to plaintiffs without a confidentiality obligation.

Additionally, the requirement to disclose an insurer's denial, contestation, or reservation of rights regarding coverage will be more complex than may appear. The practical reality is that insurers are risk averse and almost always reserve the right to provide or dispute coverage, at times because a decision to deny coverage turns on an adjudication which does not come until the end of an underlying case. Therefore, these types of disclosures will likely be commonly triggered but will either confuse financial statement users or will cause undue concern about the company's coverage and exposure. A company will be compelled to explain the reasons for the insurer's reservation of rights and the likelihood, or lack thereof, that the reservation of rights will actually lead to an absence of coverage. These additional explanations will necessitate detailed discussions of the facts and legal theories of the case and elucidation of why coverage is ultimately not in jeopardy. Unavoidably, such in depth explanations will leave the financial statement user in the untenable position of sorting through the significance of the disclosure and will result in revelation of non-public, privileged information or attorney work product, which will, in turn, risk privilege waiver and prejudice the disclosing company. The prejudice would occur not only in the litigation at hand but in possible future litigation of the same type as well as with insurance carriers in later coverage disputes for all of the same reasons outlined above (*e.g.*, disclosure of "discoverable," "non-privileged" and "publicly available" information).

To Avoid Potential Confusion Caused by Disclosure in Financial Statements of Unrealistic Claims (i.e., remote asserted contingencies that never develop further), the Board Should Clarify That Companies May Consider All Potential Mitigants in Determining Whether Disclosure is Required With Respect to Remote Contingencies

The Exposure Draft is a significant improvement from the original proposal insofar as it does not require disclosure of remote loss contingencies involving unasserted claims expected to be resolved within the next year. Clarification that the amount of damages sought by a plaintiff is not, by itself, determinative of whether a contingency could have a severe impact, also was helpful given the potential that a claim may be "frivolous with an artificially inflated amount."

The requirement for disclosure about asserted remote contingencies that could expose a company to a "potential severe impact," however, still raises concerns. Precisely because the likelihood is slight that these contingencies will result in a loss, most of them will never result in any loss, let alone a "severe impact." Accordingly, disclosure of remote contingencies will clutter financial statements with extraneous information without enhancing, and potentially distorting, users' understanding of the company's financial condition. It is true that litigation occasionally unexpectedly results in a severe loss, taking financial statement users by surprise, but the new disclosure will not eliminate the surprise. If the financial statements disclose an array of remote contingencies, the user will be no better able to determine those which will actually result in a severe loss than it would have been without disclosure. The disclosure is thus likely to be either alarmist or

confusing, suggesting that the entity faces more litigation risk than it actually does, or useless, because the user will disregard the disclosure altogether. Financial statement users will be disserved unless companies continue to be expressly allowed to consider all relevant circumstances (*e.g.*, insurance, indemnification, etc.) in determining whether disclosure is appropriate as suggested in the general commentary in the Exposure Draft explaining that a company should assess its "specific facts and circumstances" to determine whether disclosure should be made.

It also would be imprudent to supplant the securities law standard of materiality, which requires consideration of both probability and magnitude in making disclosure judgments. To do so will require burdensome and time consuming analysis and discussions with auditors with respect to claims that management would have previously deemed immaterial. In addition, this disclosure would prejudicially reveal to adversaries that the reporting entity views the potential outcome of the contingency as not only material but "severe," which would tend to drive up settlement costs to the detriment of the company and its stakeholders. This proposed new requirement may also encourage plaintiffs to make extremely large damage claims in meritless cases in the hope that a company will offer an unwarranted nuisance settlement of a claim to avoid having to make potentially misleading and detailed loss contingency disclosures. The effects of this incentive may be highly burdensome and potentially prejudicial to a company like Dollar General that, as a result of the nature of its business, routinely addresses many claims.

The inexactness of the Exposure Draft's proposed standard, coupled with the concern that plaintiffs may simply inflate their damages claims to extract disclosure, could result in disclosure that is little more than guesswork. To address these concerns, we strongly urge that, if the Board moves forward with this standard-setting project, the final guidance should remove paragraph 450-20-50-1D and clarify that disclosures related to remote loss contingencies are not required.

The Board should modify the implementation timetable for any final standard that is adopted

Implementation of the Exposure Draft for fiscal years ending after December 15, 2010 is not operational. Because the Board presumably will redeliberate in the wake of the comments on the Exposure Draft, the ultimate ASU will not likely be issued before late in 2010. If the proposals described in the Exposure Draft are retained, companies will be required to gather a substantial amount of additional information and to undergo for the first time an audit of their new disclosures with external auditors[6] that likewise have never audited the full range of such information. The proposed amendments will require significant adjustment to procedures with respect to potential loss contingencies, even if the issues we have raised are adequately addressed in the final standard. Particularly given the sensitive issues raised by the new disclosures, we believe that implementation of the new standard should allow companies to do this in a thoughtful way. It is not prudent nor realistic to provide only a few months at best for the creation of adequate documentation and controls necessary to ensure the accuracy and integrity of this process from both the reporting entity and the

[6] Moreover, because the audit process will require that the external audit team verify new categories of information with outside counsel, the Treaty governing the provision of information by counsel to the auditors may need to be re-examined and possibly amended, a potentially lengthy process.

auditor perspective and to actually implement the additional disclosure preparation and auditing work.

Guidance is Needed on Application of the Exposure Draft's Requirements to Loss Contingencies Other than Litigation

As a general matter, it is unclear what types of loss contingencies, other than litigation, the Exposure Draft is intended to address and how the proposed requirements would apply to non-litigation contingencies. For example, although uncertainty in income taxes is excluded from the scope of the Exposure Draft, there are many other types of taxes (e.g., payroll tax, value added tax, withholding tax, gross receipts tax) for which loss contingencies are accrued. These taxes are often the subject of audits by taxing authorities involving review of documentation and interpretation of law. The issues discussed above relating to prejudicial effects to a company in litigation would appear to apply equally to disclosures relative to tax authority audit assessments. Accordingly, the Board should clarify what is within the scope of the proposed disclosures and provide examples of disclosure as applied to other types of loss contingencies.

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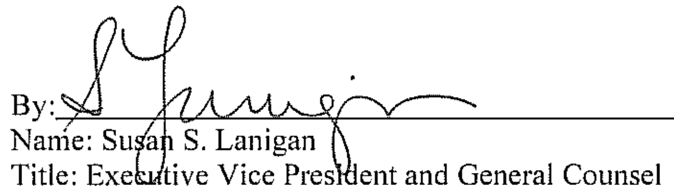
Conclusion

We would like to acknowledge the Board's thoughtful consideration of the concerns raised in comments to the original 2008 proposal. We appreciate the opportunity to comment on the Exposure Draft and hope our perspective is helpful in addressing what are admittedly complex and difficult issues at the intersection of law and accounting.

We would be pleased to respond to any inquiries regarding this letter or our views on the Exposure Draft more generally. Please contact any of Susan Lanigan, Executive Vice President & General Counsel, 615-855-5160; David Tehle, Executive Vice President and Chief Financial Officer, 615-855-5506; or Anita Elliott, Senior Vice President and Controller, 615-855-4813.

Very truly yours,

DOLLAR GENERAL CORPORATION



By:
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